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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

MODESTO DIVISION

In re

SHEILA WALL,

Debtor.

Case No. 08-92658-A-13G

Docket Control No. TPH-3

Date: May 4, 2009

Time: 1:30 p.m.

MEMORANDUM

The debtor seeks to value her home in order to strip off a junior secured claim. See In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

It is undisputed that this property is encumbered by Wells Fargo's first deed of trust, which secures a loan balance of approximately \$351,332. If the debtor's \$300,000 valuation is correct, the junior secured claim of Jenny Bick is completely under-collateralized. See 11 U.S.C. § 506(a)(1).

The debtor's home is located in Oakdale, California. It sits on a .46 acre parcel, is 1,442 sq. ft., and is approximately 20 years old. In the debtor's opinion, her home has a value of \$300,000.

Ms. Bick objected to the debtor's \$300,000 valuation. Her objection initially maintained, on the strength of an appraisal by Theresa Smith, a licensed real estate appraiser, that the

1 debtor's home had a value of \$414,000.

2 The debtor, in turn, procured her own appraisal. In the
3 opinion of Craig Blevins, a certified residential appraiser, the
4 debtor's home is worth only \$219,000. His appraisal also noted
5 that Ms. Smith's appraisal contained material factual errors.

6 • Ms. Smith reported that the home was not connected to a
7 gas utility and instead relied upon propane.

8 • The flood map used by Ms. Smith was outdated.

9 • Ms. Smith incorrectly reported that the property was
10 zoned R-1 rather than the correct zoning, A-2-10.

11 • And, most significantly, Ms. Smith's appraisal was
12 based on the assumption that the home sat on 1.422 acres
13 rather than the correct lot size of .46 acre.

14 According to Mr. Blevins, the last error was the most
15 significant because it led Ms. Smith to choose comparable
16 comparison properties that were much larger than the debtor's
17 home.

18 Given the conflicting valuations, the court conducted an
19 evidentiary hearing in order to determine value. Prior to the
20 evidentiary hearing, Ms. Smith revised her appraisal in light of
21 Mr. Blevin's criticisms. She adjusted her valuation down to
22 \$409,000.

23 After reviewing all of the appraisals and considering the
24 testimony of both appraisers, the court agrees with the debtor's
25 position that Ms. Smith's appraisal (both of them) is not
26 reliable.

27 First, there are the admitted errors pointed out by Mr.
28 Blevins.

1 Second, although Ms. Smith's appraisal noted that the market
2 for home sales was declining, her appraisal made no adjustment
3 for that market condition. Her explanation for this was not
4 convincing.

5 Equally unconvincing was Ms. Smith's argument that even
6 though her initial appraisal assumed a 1.422 acre lot size, this
7 error was irrelevant to value because anything over approximately
8 one-half acre was just surplus land with no value. While
9 residential additional acreage might not have the same value as
10 acreage that can be committed to commercial use, it defies logic
11 and credulity to suggest that it has no value to a rural home
12 buyer.

13 Finally, there is a problem with Ms. Smith's appraisal that
14 even Mr. Blevins did not note. Some of her comparable sales,
15 nos. 4 and 5, are not actual sales. They are sale listings, not
16 actual sales. In a market where sales are slow and significantly
17 influenced by foreclosure sales and bank sales, the court
18 concludes that utilizing listings, as opposed to sales, is likely
19 to lead to an over-estimation of value.

20 Turning to Mr. Blevins' appraisal, the only material
21 criticism leveled against it is the fact that some of his sales
22 comparisons are bank sales. That is, however, a reflection of
23 the current market and it makes no sense to exclude them. Even
24 if the use of these sales meant that Mr. Blevins understated
25 market value, the court notes that the motion asks the court to
26 value the property at \$300,000, not \$219,000 as Mr. Blevins has
27 opined.

28 The court concludes that the fair market value of the

1 subject property is no more than \$300,000. Therefore, Ms. Bick's
2 junior secured claim is completely under-collateralized. No
3 portion of her claim will be allowed as a secured claim. See 11
4 U.S.C. § 506(a)(1).

5 Because Ms. Bick's claim is completely under-secured, no
6 interest need be paid on the claim except to the extent otherwise
7 required by 11 U.S.C. § 1325(a)(4). If a secured claim is \$0,
8 because the collateral for the claim has no value, no interest
9 need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

10 To the extent Ms. Bick may object to valuation of her
11 collateral in a contested matter rather than an adversary
12 proceeding, the objection is overruled. Valuations pursuant to
13 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested
14 matters and do not require the filing of an adversary proceeding.

15 Further, even if considered in the nature of a claim
16 objection, an adversary proceeding is not required. Fed. R.
17 Bankr. P. 3007. It is only when such a motion or objection is
18 joined with a request to determine the extent, validity or
19 priority of a security interest, or a request to avoid a lien
20 that an adversary proceeding is required. Fed. R. Bankr. P.
21 7001(2).

22 In connection with the valuation of Ms. Bick's collateral,
23 the court is not determining the validity of her claim or
24 avoiding her deed of trust. Her deed of trust will remain of
25 record until the plan is completed. This is required by 11
26 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if Ms.
27 Bick will not reconvey her deed of trust, the court will
28 entertain an adversary proceeding. See also 11 U.S.C. §


1 1325(a)(5)(B)(i).

2 In the meantime, the court is merely valuing Ms. Bick's
3 collateral. Rule 3012 specifies that this is done by motion.
4 Rule 3012 motions can be filed and heard any time during the
5 case. It is particularly appropriate that such motions be heard
6 in connection with the confirmation of a plan. The value of
7 collateral will set the upper bounds of the amount of the secured
8 claim. 11 U.S.C. § 506(a). Knowing the amount and character of
9 claims is vital to assessing the feasibility of a plan, 11 U.S.C.
10 § 1325(a)(6), and determining whether the treatment accorded to
11 secured claims complies with 11 U.S.C. § 1325(a)(5).

12 For the foregoing reasons, the court determines that the
13 subject property has a fair market value of \$300,000, and that
14 the property, after deducting the senior lien, provides no
15 security for Ms. Bick's claim.

16 Dated: *7 May 2009*

17 By the Court

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19 _____
20 Michael S. McManus, Judge
21 United States Bankruptcy Court
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CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

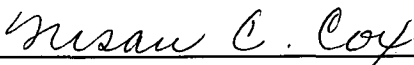
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Dated: May 7, 2009



Susan C. Cox
Judicial Assistant to Judge McManus